

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 11 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0008
)	2 CA-CR 2011-0011
Appellant,)	(Consolidated)
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
DARELL SCORPIO SMITH, DARRIN)	Not for Publication
NOLAN SMITH,)	Rule 111, Rules of
)	the Supreme Court
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause Nos. CR201000268 and CR201000267

Honorable Robert Duber II, Judge

DISMISSED

Daisy Flores, Gila County Attorney
By Joy Riddle

Globe
Attorneys for Appellant

Emily Danies

Tucson
Attorney for Appellees

H O W A R D, Chief Judge.

¶1 The state appeals from the trial court’s orders granting Darell Smith and Darrin Smith’s motions to suppress evidence found as a result of a warrantless stop and search of a car. Because we lack jurisdiction, we dismiss.

Factual and Procedural Background

¶2 We need not reach any underlying factual issues here. Darell and Darrin were each indicted for possession of phencyclidine (PCP) for sale and possession of drug paraphernalia. After a hearing, the trial court denied the defendants’ motions to suppress. However, after a hearing on motions to reconsider, the court granted the motions to suppress the evidence. The minute entries for that hearing were both filed on November 1, 2010. The state appealed from the orders granting the motions to suppress in notices filed on November 30 and December 1. After a motion by Darell, this court ordered the cases consolidated on appeal.

Discussion

¶3 The state asserts we have jurisdiction over the appeal under A.R.S. § 13-4032(6). However, we must independently determine whether we have jurisdiction. *State v. Limon*, 624 Ariz. Adv. Rep. 17, ¶ 3 (Ct. App. Dec. 21, 2011). Because our jurisdiction is statutorily prescribed, “we have no authority to entertain an appeal over which we do not have jurisdiction.” *Id.*

¶4 Section 13-4032(6) permits the state to appeal from “[a]n order granting a motion to suppress the use of evidence.” Rule 31.3, Ariz. R. Crim. P., requires a notice of appeal to be filed “within 20 days after the entry of judgment and sentence.” Thus, when the state appeals from the grant of a motion to suppress, it must file its notice of

appeal within twenty days of the court's entry of the order. *Limon*, 624 Ariz. Adv. Rep. 17, ¶¶ 8-9. Here, the state filed its notices of appeal twenty-nine and thirty days after the court's order granting the motion to suppress evidence. In its notices of appeal, the state acknowledged that it appealed from the court's October 29 rulings, which were filed on November 1. Because the state's appeals were untimely, we do not have jurisdiction over the appeal.

Conclusion

¶5 For the foregoing reasons, the state's notices of appeal were untimely. Because we lack jurisdiction over this appeal, we dismiss it.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge